



Civil Resolution Tribunal

Date Issued: November 28, 2018

File: SC-2018-000279

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Goodman v. Parsons*,
2018 BCCRT 777

B E T W E E N :

Thomas Goodman

APPLICANT

A N D :

Susan Parsons

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. This final decision of the Civil Resolution Tribunal (tribunal) has been made without the participation of the respondent, Susan Parsons, due to her non-compliance with the tribunal's directions as required, as discussed below.

2. The applicant Thomas Goodman says he rented a room from the respondent Susan Parsons, who owned the accommodation. When he vacated the room, he says Ms. Parsons refused to return his \$75.00 damage deposit. The applicant claims a refund of the deposit.
3. In her Dispute Response, Ms. Parsons says Mr. Goodman stole recyclables from her while renting the room, caused damage to the oven, and had his girlfriend stay over. Ms. Parsons says she agreed to refund \$70.00 of the deposit, but never did.
4. The parties are each self-represented.

JURISDICTION AND PROCEDURE

5. Section 36 of the *Civil Resolution Tribunal Act* (Act) applies if a party to a dispute fails to comply with the Act or its regulations. It also applies if a party fails to comply with tribunal rules in relation to the case management phase of the dispute, including specified time limits, or an order of the tribunal made during the case management phase. Rule 6 requires that parties involved in a dispute must following directions provided by facilitators. After giving notice to the non-compliant party, the case manager (facilitator) may refer the dispute to the tribunal for resolution and the tribunal may:
 - a. hear the dispute in accordance with any applicable rules.
 - b. make an order dismissing a claim in the dispute made by the non-compliant party, or
 - c. refuse to resolve a claim made by the non-compliant party or refuse to resolve the dispute.
6. These are the formal written reasons of the tribunal. The tribunal has jurisdiction over small claims brought under section 3.1 of the Act. The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal must apply principles of law and

fairness, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.

7. Under tribunal rule 126, in resolving this dispute the tribunal may make one or more of the following orders:
 - a. order a party to do or stop doing something;
 - b. order a party to pay money;
 - c. order any other terms or conditions the tribunal considers appropriate.

ISSUES

8. The first issue is whether I should proceed to decide the applicant's claim, without the respondent's further participation given her non-compliance.
9. The second issue is to what extent I should order the respondent to pay the applicant the claimed \$75.00.

EVIDENCE AND ANALYSIS

Non-compliance

10. My August 31, 2018 summary decision to hear the dispute without the respondent's participation, given her non-compliance, was previously communicated to the parties by email, through the tribunal facilitator. The details supporting that decision are set out below.
11. The respondent is the non-compliant party in this dispute. She failed to participate in the case management phase, as required by sections 25 and 32 of the Act and tribunal rules 94 to 96, despite multiple attempts by the facilitator to contact her with a request for a reply.

12. The Dispute Notice was issued on January 24, 2018. The respondent submitted a Dispute Response on February 11, 2018. The facilitator then made the following attempts at contact:

- a. **August 20, 2018** – The facilitator attempted to reach the respondent by email and phone, asking that she respond to the email requesting information on or before August 21, 2018. The respondent did not reply.
- b. **August 22, 2018** – The facilitator left a voice mail for the respondent asking her to respond to the email request for information. The respondent did not reply.
- c. **August 23, 2018** – The facilitator emailed the respondent requesting a response no later than August 24 at 4:00 p.m., failing which the dispute would be referred to a tribunal member to decide without her further participation. The respondent did not reply.
- d. **August 24, 2018** – The facilitator sent a final warning to the respondent, writing that unless a reply was received by August 28, 2018 at 9:00 a.m., the dispute would be referred to tribunal member to decide without her further participation. The respondent did not reply.

13. The facilitator referred the respondent's non-compliance with the tribunal's rules to me for a decision as to whether I should decide the dispute without her further participation.

Should the tribunal hear the applicant's dispute?

14. I find the respondent has not provided an adequate explanation about why she failed to communicate with the tribunal as required. I find the facilitator made a reasonable number of attempts to contact her. Parties are told at the beginning of a tribunal proceeding that they must actively participate in the dispute resolution process. I find it is more likely than not that the respondent was aware of the attempts to contact her and chose not to respond.

15. The tribunal's rules are silent on how it should address non-compliance issues. I find that in exercising its discretion, the tribunal must consider the following factors:
- a. whether an issue raised by the claim or dispute is of importance to persons other than the parties to the dispute;
 - b. the stage in the facilitation process at which the non-compliance occurs;
 - c. the nature and extent of the non-compliance;
 - d. the relative prejudice to the parties of the tribunal's order addressing the non-compliance; and
 - e. the effect of the non-compliance on the tribunal's resources and mandate.
16. First, this claim does not affect persons other than the parties involved in this dispute.
17. Second, the non-compliance here occurred at the outset of the facilitation process. No substantive discussions between the parties occurred. The respondent effectively abandoned the process after providing a response. Third, given the facilitator's repeated attempts at contact and the respondent's failure to respond in any meaningful way despite warnings of the consequences, I find the nature and extent of the non-compliance is significant.
18. Fourth, I see no prejudice to the applicants in hearing the dispute without the respondent's participation. The prejudice to the respondent of proceeding to hear the dispute is outweighed by the circumstances of his non-compliance. If I refused to proceed to hear the dispute, the applicant would be left without a remedy. That would be unfair.
19. Finally, the tribunal's resources are valuable. Its mandate to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly is impaired if one party fails to participate. I find that it would be wasteful for the

tribunal to continue applying resources to this dispute, such as by making further attempts to seek the respondent's participation.

20. In weighing the factors, I find the applicant's claims should be heard. In deciding to hear the applicant's dispute I have put significant weight on the following factors:
 - a. the extent of the non-compliance is significant;
 - b. the applicant is not prejudiced if such an order is made; and
 - c. the need to conserve the tribunal's resources.

Merits of the Dispute and Damages

21. I have decided to hear the dispute without the respondent's participation. I turn to the merits of the dispute.
22. Section 4 (c) of the *Residential Tenancy Act* (RTA) says that the RTA does not apply to accommodation where the tenant shares bathroom or kitchen facilities with the owner. Since the kitchen was shared between the applicant (tenant) and the respondent, who owned the accommodation, I find that the RTA does not apply to this dispute.
23. Where a respondent filed a response but has since failed to comply with the tribunal's directions, an adverse inference may be drawn against that respondent. This means that if the respondent refuses to participate, it is generally reasonable to assume that the applicant's position is correct on the issue at hand. This concept is similar to where liability is assumed when a respondent has failed to provide any response to the dispute and is in default.
24. Having said that, I reviewed the Dispute Response, because it was filed prior to the respondent's non-compliance.
25. The respondent asserted that her oven was damaged and that recyclables were taken by the applicant. However, she failed to provide evidence establishing that these events occurred.

26. Given the respondent's non-compliance, I draw an adverse inference against her and accept the applicant's evidence as follows:

- a. Between August and October 2017, the applicant rented a room from the respondent.
- b. The applicant paid a damage deposit of \$75.00 to the respondent.
- c. The parties agreed that the respondent would return the deposit if no damage, aside from normal wear and tear, was done to the room or shared facilities.
- d. The applicant requested a refund in November 2017.
- e. Despite agreeing that some of the deposit ought to be refunded, the respondent did not return any part of the damage deposit.

27. I find the deposit was paid and must be refunded.

28. Under section 49 of the Act, and tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. Given that no tribunal fees were paid I make no order on this point.

ORDERS

29. Within 10 days of the date of this order, I order the respondent to pay the applicant a total of \$75.36, broken down as follows:

- a. \$75.00 as reimbursement for the deposit,
- b. \$0.36 in pre-judgment interest under the *Court Order Interest Act*, calculated from August 1, 2017 when the deposit was paid to the date of this decision.

30. The applicant is entitled to post-judgment interest, as applicable.

31. Under section 48 of the Act, the tribunal will not provide the parties with the Order giving final effect to this decision until the time for making a notice of objection under section 56.1(2) has expired and no notice of objection has been made. The time for filing a notice of objection is 28 days after the party receives notice of the tribunal's final decision.

32. Under section 58.1 of the Act, a validated copy of the tribunal's order can be enforced through the Provincial Court of British Columbia. A tribunal order can only be enforced if it is an approved consent resolution order, or, if no objection has been made and the time for filing a notice of objection has passed. Once filed, a tribunal order has the same force and effect as an order of the Provincial Court of British Columbia.

Julie K. Gibson, Tribunal Member